

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

REMARKS

Applicants respectfully request reconsideration and allowance of this application in view of the following comments.

Claims 12-28 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 5,876,702. In response, Applicants respectfully request that this issue be held in abeyance until allowable subject matter is indicated, at which time Applicants will either prove patentable distinctness or file a terminal disclaimer.

Claims 12-19, 21-26 and 28 were rejected under 35 USC § 102(e) as being anticipated by Gers-Barlag et al., U.S. Patent No. 5,876,702 ("Gers-Barlag '702").

Claim 20 was rejected under 35 USC § 103(a) as being obvious over Gers-Barlag '702.

Claim 27 was rejected under 35 USC § 103(a) as being obvious over Gers-Barlag '702 in view of either Billia et al ("Billia"), U.S. Patent No. 5,486,353, or Robinson et al. ("Robinson"), U.S. Patent No. 5,306,485.

In response to *all* of the foregoing rejections based on Gers-Barlag '702, Applicants reiterate that Gers-Barlag '702 is not prior art. A certified English-language translation of the priority document will be filed as soon as possible.

Claims 12, 13, 16-21, 24-26 and 28 were rejected under 35 USC § 103(a) as being obvious over Allard et al. ("Allard"), U.S. Patent No. 5,616,331.

Claims 14, 15, 22, 23 and 27 were rejected under 35 USC § 103(a) as being obvious over Allard in view of either Billia or Robinson or Gers-Barlag '702.

In response to *both* of the rejections based on Allard, Applicants point out that Allard makes reference to a single sulfonic acid derivative as a sunscreen agent only in passing, and, hence, such compounds are not an essential component of Allard's invention. For the reasons advanced in the instant specification on pages 2-5, it was completely surprising and unexpected that the advantageous properties of UV filter substances comprising one or more sulphonic acid or sulphonate groups could be maximized by including such UV filter substances in the formulations as presently claimed. There is absolutely no teaching or suggestion of such result in

Allard alone or in combination with the other cited references. Accordingly, such result is surprising and unexpected, and, therefore, indicative of nonobviousness.

Claims 12-28 were rejected under 35 USC § 103(a) as being obvious over Gers-Barlag et al., U.S. Patent no. 5,725,844 (Gers-Barlag '844), in view of either Grollier et al. ("Grollier"), U.S. Patent No. 5,427,771 or Billia or Robinson or Gers-Barlag '702. In response, Applicants respectfully request that the Examiner reconsider and withdraw this rejection. The Court recently held in *In re Geisler*, 43 USPQ2d 1362, 1365 (fed. Cir. 1997), that a *prima facie* case of obviousness "can be rebutted if the applicant (1) can establish 'the existence of unexpected properties in the claimed range' or (2) can show 'that *the art in any material respect taught away*' from the claimed invention (emphasis added.)" The Examiner concedes that Gers-Barlag does not specifically teach polyglyceryl emulsifiers. Indeed, the examples therein, which must be considered Gers-Barlag's most preferred embodiments, utilize monoglyceryl emulsifiers. Accordingly, Gers-Barlag actually leads away from the present invention.

Grollier is cited in support of this rejection, and, while it is true that both Grollier and Gers-Barlag relate to sunscreen formulations, there is nothing in Grollier that would lead persons skilled in the art to expect that polyglyceryl emulsifiers should be useful in Gers-Barlag's formulations. Therefore, Grollier does not actually remedy the deficiencies of Gers-Barlag.



HENIRICH GERS-BARLAG ET AL  
USSN 08/987,468

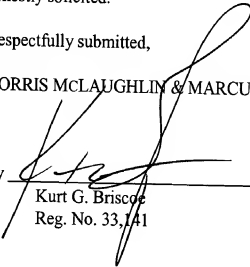
The other secondary references also do not remedy the deficiencies of Gers-Barlag '844.  
Accordingly, the cited combination of references do not, in fact, make out a *pima facie* case of obviousness.

Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.

Early and favorable action is earnestly solicited.

Respectfully submitted,

NORRIS MCLAUGHLIN & MARCUS, P.A.

By   
Kurt G. Briscoe  
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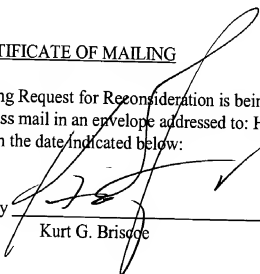
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CERTIFICATE OF MAILING

I hereby certify that the foregoing Request for Reconsideration is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Hon. Commissioner of Patents, Washington, D.C. 20231, on the date indicated below:

Date: November 2, 2001

By   
Kurt G. Briscoe

# Released Time Report

November 2, 2001

Timekeeper: Briscoe, Kurt G. (0345)

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Date	Client	Client Name	Matter	Service	Hours	Narrative
11/02/2001	100718	BEIERSDORF	95		3.00	USSN 08/987 468 [DE 196 51 478 9] (Your Ref: 6713-Dr. Wi-ar): Study Office Action, cited references, specification, claims and prosecution history to date; and prepare and file a response to the Office Action; and report to client
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Report Total:					3.00	Signature:



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